

# Agenda

## Item #4



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

To: Commission Members and Counsel

From: Jonathan Wayne

Date: January 15, 2008

Re: Lobbying and Other Services Provided by Verrill Dana LLP to the Maine  
Community Cultural Alliance

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On October 29, 2007, the State Controller issued a report of an internal control audit of four state cultural agencies: the Maine Arts Commission, the Maine Historical Preservation Commission, the Maine Library Commission, and the Maine State Museum Commission. One of the issues considered in the audit was whether the agencies hired two attorneys at Verrill Dana LLP, James I. Cohen and Michael V. Saxl, to provide services beginning in 2004 that included lobbying.

Mr. Cohen and Mr. Saxl have explained that in 2004 they agreed to work with several cultural leaders in the state to re-establish a previously existing organization, the Maine Community Cultural Alliance (MCCA), to support arts and cultural organizations statewide. They state that they provided a variety of services (discussed below) through September 2007, initially not knowing whether the MCCA would be re-established and whether they would be paid for their services. They were proceeding with the representation out of a commitment to help arts and cultural organizations in Maine.

At your meeting on October 30, 2007 you directed me to conduct preliminary fact-gathering on the issue of whether the two attorneys were required to register as lobbyists with the Commission and file monthly reports. The staff concludes that they were not required to register as lobbyists because they did not meet the threshold of providing eight hours of lobbying services to MCCA within a single calendar month. We therefore believe no action is required by the Commission.

### **Controller's Audit Report**

In June 2007, the State Controller's office received an allegation that the cultural agencies had attempted to revive the MCCA in order to pay for lobbying of the Maine Legislature. The Controller's October 29 audit report and a subsequent November 30 audit report contained findings that the agencies had deviated from purchasing and other policies for state government agencies. These findings have been given due consideration by other departments of state government, and are not within the

jurisdiction of the Ethics Commission. This inquiry is focused exclusively on whether the attorneys were required to register with the Commission as lobbyists.

### **Legal Requirements for Lobbyists to Register and File Reports**

The purpose of Maine's Lobbyist Disclosure Law is to provide the public with information about who is paying lobbyists to influence the legislative process. Individuals qualify as lobbyists if they have been employed by another party for the purpose of lobbying and if they have engaged in lobbying for more than 8 hours in a calendar month. The definition of lobbyist is:

**10. Lobbyist.** "Lobbyist" means any person who is specifically employed by another person for the purpose of and who engages in lobbying in excess of 8 hours in any calendar month, or any individual who, as a regular employee of another person, expends an amount of time in excess of 8 hours in any calendar month in lobbying. "Lobbyist" does not include a lobbyist associate. (3 M.R.S.A. § 312-A(10))

The definition of lobbying primarily includes direct communication with a government official to influence legislation, and does not include many services which the lay public might presume are part of lobbyists' everyday work. The following definition was in effect through September 19, 2007:

**9. Lobbying.** "Lobbying" means to communicate directly with any official in the Legislature for the purpose of influencing any legislative action or with the Governor for the purpose of influencing the approval or veto of a legislative action when reimbursement for expenditures or compensation is made for those activities. It includes the time spent to prepare and submit to the Governor, a Legislator or a legislative committee oral and written proposals for, or testimony or analyses concerning, a legislative action. (3 M.R.S.A. § 312-A(9))

This definition does not include, for example, time spent by a lobbyist in meetings with a client discussing legislation; time which a lobbyist spends monitoring legislation; and time spent performing legal or quantitative research that is never provided to the Legislature or the Governor. Even though these activities may relate to legislation and may be billable to a client, they fall outside the statutory definition of lobbying and do not count toward the eight-hour per month threshold.

The definition of lobbying includes the qualifying clause "when reimbursement for expenditures or compensation is made for those activities." If someone is petitioning the Legislature outside of a paid employment relationship (*e.g.*, because they care personally about an issue of public policy), the communication is not lobbying.

## Services Provided by Verrill Dana

The Commission staff examined the work papers of the State Controller for the October 29, 2007 report and interviewed David Cheever, who was MCCA's contact person for the Verrill Dana attorneys. On November 15, 2007, we sent a questionnaire to James Cohen and Michael Saxl, and they provided a detailed response dated November 29.

Based on the audit documents and the response by Verrill Dana, it appears that the attorneys provided MCCA<sup>1</sup> with services worth \$131,903. The firm was paid \$28,500 and the remaining amount (\$103,403) ultimately was considered *pro bono*.

Mr. Cohen and Mr. Saxl explain that most of the services they provided to MCCA did not consist of lobbying as it is defined in 3 M.R.S.A. § 312-A(9):

[T]he bulk of our activities fell outside the definition of "lobbying" insofar as they fell into the following primary categories: (1) internal communications with coalition partners rather than to covered officials (these were weekly calls and meetings taking up tremendous amounts of time); (2) legislative monitoring and reviewing of printed bills and calendars; (3) legal work and communications related to the formation of MCCA; (4) media relations; (5) grassroots activities; and (6) work with Executive Branch officials other than the Governor regarding the New Century Program.

In response to our questionnaire, the attorneys provided a chart showing a monthly breakdown of the services they provided for each month from May 2004 to September 2007. (See Exhibit 6 of the firm's November 29 response.<sup>2</sup>) *The chart indicates that James Cohen and Michael Saxl did not spend more than 8 hours in a calendar month providing lobbying services to MCCA, which would have required them to register as lobbyists.* When the activities of Verrill Dana's employees are added together, the chart indicates that the firm provided 701.2 hours of services to MCCA, of which 118.2 hours were spent lobbying (16.8%).

## Staff's Examination of Billing Records

Like many law firms, attorneys at Verrill Dana keep detailed records of the work they have performed. The information is typed into a computerized billing system.

At the request of the Commission staff, Verrill Dana permitted Assistant Director Paul Lavin and I to review the time records for all work performed for MCCA for the period

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<sup>1</sup> For the sake of simplicity, this memo refers to the Maine Community Cultural Alliance as Verrill Dana's client, even though it could be argued that MCCA was not successfully revived as a functioning organization and that others benefitted from the firm's services.

<sup>2</sup> On January 8, 2008, Verrill Dana provided us with a revised version of Exhibit 6 which, I believe, fixed some minor math miscalculations. To avoid any confusion, I have included only the revised version of Exhibit 6 in the attached materials.

from December 2004 to July 2005. We selected these eight months as a manageable sample because this appeared to be the time period in which the attorneys were busiest providing services to MCCA and, thus, the period in which they were most likely to exceed the threshold of eight hours in a calendar month.

On January 8, 2008, Paul Lavin and I visited the Augusta office of Verrill Dana and reviewed the time records privately in a conference room. The firm allowed us to review the descriptions and time amounts for all entries for the account – both lobbying and non-lobbying. Those entries which the attorneys had previously counted as lobbying in Exhibit 6 were highlighted before we arrived. We believe this opportunity to review the time records demonstrated a high degree of cooperation by the firm. Under its current statutory authority, the Commission would have been unable to subpoena these records.

Based upon our review, Paul and I found that the attorneys recorded their work for MCCA with sufficient detail to distinguish lobbying tasks from non-lobbying tasks. The attorneys had a good understanding of which activities fell within the statutory definition of lobbying and which activities did not. Our conclusion was that the monthly totals of lobbying work and non-lobbying work in Exhibit 6 for the period of December 2004 - July 2005 accurately reflected the entries in the firm's billing system. Based on our review, we tend to have confidence in the overall accuracy of Exhibit 6.

#### **Staff Recommendation**

In light of the detailed response of Verrill Dana to our request for information and the confirmation provided by our examination of the time records, the staff concludes that Mr. Cohen and Mr. Saxl were not required to register as lobbyists. The time records support the firm's explanation that the bulk of services provided to MCCA were not lobbying. In particular, our review showed that meetings with the client and communications to the client occupied a great deal of the attorneys' time during early 2005. It therefore appears that the Verrill Dana attorneys did not meet the threshold which required them to register as lobbyists. We recommend no further action in this matter.

#### **Attached documents**

- Verrill Dana's November 29, 2007 response to the staff's questionnaire (includes revised Exhibit 6)
- Commission staff's November 15, 2007 questionnaire
- Verrill Dana's January 7, 2008 letter confirming the completeness of Exhibit 6
- State Controller's October 29, 2007 audit report (without most attachments)

# Verrill Dana<sup>LLP</sup>

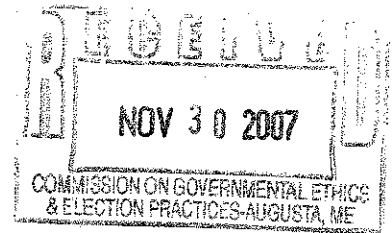
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November 29, 2007

Jonathan Wayne  
Executive Director  
Maine Commission on Governmental Ethics and Election Practices  
135 State House Station  
Augusta, ME 04333-0135



Dear Mr. Wayne:

This letter is provided in response to your request for information dated November 15, 2007. We are pleased to have the opportunity to provide the Maine Commission on Governmental Ethics and Election Practices (the "Commission") with the requested information in order to assist the Commission in reviewing the questions raised in this matter. We believe, and are confident that the Commission will find, that we were not required to register and file reports with the Commission as lobbyists in connection with our work with the Maine Community Cultural Alliance or other non-profit cultural organizations.

We appreciate that the Commission's inquiry is limited to whether we were required to register as lobbyists. Neither of us was required to register as lobbyists for two independent reasons:

- We were not compensated for the lobbying activities we engaged in (which constituted only 16% of our overall work effort).
- We did not reach the 8-hour threshold for reporting lobbying activity in any calendar month.

These reasons are described more fully below. We also have provided below a brief factual summary of our activities, followed by our specific responses to the seven questions asked in your letter of November 15.

## Our Firm's Support of the Arts and Culture in Maine

As noted in the State Controller's audit, Verrill Dana and Maine Street Solutions provided *pro bono* services related to the New Century Community Program on behalf of a broad coalition of private arts and cultural institutions over the last four years valued at over \$100,000. We believe in arts and culture as an important tool to improve Maine's economy and strengthen our society, and we are proud of our ability and our commitment to provide substantial *pro bono* services to the cultural community. We are particularly proud of the New

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Century Program, which provides matching grants to arts and cultural organizations throughout the State of Maine with zero dollars retained by the State for administration. This Program has in turn been nationally recognized for its efficiency and innovation by the Pew Charitable Trust and Harvard University's John F. Kennedy School.

Our personal commitment to arts is substantial and longstanding. Jim Cohen is a former trustee of the Portland Symphony Orchestra where he served three years as the board's Vice President of Budget and Finance. As Mayor of Portland in 2006, Jim was known as the "Arts Mayor," and he currently chairs the Creative Economy Steering Committee which he formed last year. Jim has also spoken nationally about the New Century Program at the U.S. Federation of Humanities Councils Annual Meeting and at the Summer Meeting of the Coalition of State Library Associations.

During his service in the legislature, Michael Saxl was the chief sponsor of the New Century legislation. He successfully helped build coalitions and secure strong bi-partisan support for the program. In his personal life he has supported the arts, culture and humanities in very direct ways. He has enjoyed involvement ranging from acting in the Shoestring Theatre's annual production of the Christmas Carol for a number of years to currently serving as the President of the Board of the Holocaust and Human Rights Center of Maine.

Suffice it to say that we are deeply committed to the arts and humanities and have demonstrated that commitment in both our professional and personal lives.

#### The Maine Community Cultural Alliance

We have provided services to various non-profit cultural institutions in Maine for years, largely on a *pro bono* basis. In fact, as lobbyists for many private business interests in Maine, we view our association with arts and cultural organizations as positive and something to be promoted—even if the work is unpaid. Our efforts on behalf of arts and culture have centered on the New Century Community Program, which is a grant program established by the Legislature and administered by the Maine Cultural Affairs Council. Our efforts can largely be described as strategic, marketing, monitoring, and legal in nature. A small percentage of our services constituted direct advocacy services, but largely without compensation and below reportable thresholds.

Our original work in this arena, in 2001 and 2003, was on behalf of the Maine Humanities Council, a private non-profit corporation based in Portland that is also a member of the Maine Cultural Affairs Council. From January through April of 2004, we provided services for the Maine Library Association, a private non-profit organization whose membership base is comprised of libraries throughout the State of Maine. Our work for these organizations was largely *pro bono* related to the New Century Community Program, and in the course of our work, we worked closely with other members of the Maine Cultural Affairs Council, a legislatively established organization comprised mostly of private individuals who serve on the boards of seven designated agencies, five of whom are state agencies and two of whom are private non-

profits (namely the Maine Humanities Council and the Maine Historical Society). Five state agency directors serve as *ex officio* members of the Council, but they are non-voting members. We worked collaboratively with, but not for, the members of the Council in the same way we have worked with other state agencies in areas ranging from public utility regulation, to public spending reform, to drinking water conservation, to banking regulation.

In the fall of 2004, many cultural leaders in Maine questioned why only a handful of arts and cultural organizations were carrying the load of statewide support for arts and culture, and several individuals within the Maine Cultural Affairs Council suggested that perhaps a previously existing organization called the Maine Community Cultural Alliance should be re-formed to serve as an umbrella organization of statewide arts and cultural organizations. In fact, working with such an "Alliance" is one of the specific mandates of the Cultural Affairs Council as established by the Legislature:

4. The Council shall

...

F. Coordinate the program with a statewide cultural alliance organization that is a private nonprofit educational agency supporting libraries, museums and arts and humanities organizations and with statewide groups of individuals and artists concerned about the health of the State's cultural resources; ....

27 M.R.S.A. § 558(4)(F).

Because of our commitment to arts and culture, Verrill Dana agreed to work with several members of the Council to re-establish the Maine Community Cultural Alliance (the "Alliance" or "MCCA") with the goal that such Alliance would be a private non-profit with an independent board that would work to support arts and cultural organizations statewide. The Alliance was incorporated in December of 2004, but not until the late spring of 2005 did private individuals step forward to draft by-laws and form a nominating committee for the Alliance board. Throughout the incorporation of the Alliance, a lawyer for Verrill Dana served as sole incorporator and registered agent for the Alliance, an association and responsibility we were and are proud to assume and state publicly.

May 2004 – June 2005

From May 2004 to June 2005, we continued our work with a broad coalition of arts and cultural organizations, but we did not have a client and we did not get paid. Our retention agreement with the Maine Library Association had expired by this time, and MCCA did not exist as an independent organization until December 2004. From May through November of 2004, our work focused on four primary areas: (1) providing legal advice with regard to whether digital archives and computer hardware were properly "bondable" under an Education Bond that had been passed by the voters; (2) providing public relations advice regarding how members of



the Cultural Affairs Council should expend certain Pine Tree Zone funds already allocated by the Legislature; (3) exploring the legal requirements associated with reforming the non-profit Alliance; and (4) attending multiple meetings of the Council where the New Century Program was discussed, including efforts to catalogue the capital needs of arts and cultural organizations around the State. Few, if any, of these services met the definition of "lobbying" under Maine law because they did not involve direct communications, they did not involve covered officials, and they were unrelated to any pending or expected legislation.

Starting in December of 2004, we began attending multiple meetings of the Council with respect to the upcoming Legislative Session, and we monitored the activities of the Legislature in areas related to arts and culture. As set forth in our July 15, 2005 letter accompanying our first invoice, (Ex. 1), the bulk of our activities fell outside the definition of "lobbying" insofar as they fell into the following primary categories: (1) internal communications with coalition partners rather than to covered officials (these were weekly calls and meetings taking up tremendous amounts of time); (2) legislative monitoring and reviewing of printed bills and calendars; (3) legal work and communications related to the formation of MCCA; (4) media relations; (5) grassroots activities; and (6) work with Executive Branch officials other than the Governor regarding the New Century Program.

During the 2005 Legislative session, we also periodically engaged in activities constituting "direct communications" with covered officials with regard to the New Century Community Program, which was a pending legislative matter. However, we did not receive any compensation for our work. We did not have a client, nor did we have a specific expectation of compensation, but we proceeded with our work effort out of a commitment to help arts and cultural organizations throughout the State in spite of the real likelihood that we would not be paid. We retained billing records for these activities notwithstanding the absence of a specific client because lawyers at our firm record all their time during the day, whether billable or not, and these records indicate that the time we spent on activities defined as "lobbying" did not reach reportable thresholds.

By June 2005, the efforts to resurrect the Alliance gained some momentum. The Alliance had been incorporated in December, but it was not until June that a draft of by-laws, initially prepared by Verrill Dana, was refined with input from Steve Podgajny and Merle Nelson. Also at this time, Steve Podgajny and Dave Cheever came forward as volunteers to form the nominating committee for a board, a necessary step before MCCA could file for non-profit status or formally adopt by-laws. In July of 2005, Dave Cheever volunteered to serve as "Treasurer" of MCCA, and when Steve Podgajny stepped back due to other time commitments, Mr. Cheever became the primary point of contact for MCCA. From this point forward until MCCA was dissolved this summer by the Secretary of State, no board was ever appointed, no by-laws ever adopted, and no non-profit designation ever obtained.

July 2005 – November 2005

In July 2005, we sent our first invoice to MCCA, covering services provided from May 2004 through June 15, 2005. (Ex. 1) We sent the invoice to Steve Podgajny, who forwarded it to David Cheever, MCCA's Treasurer. This invoice itemized services provided by Verrill Dana in the amount of \$68,730.00, discounted 25% to \$51,609.75, plus \$289.02 in costs. As noted above, this invoice accurately reflected the value of the services provided, but given the absence of formal organization by MCCA, Verrill Dana had little expectation of payment for the invoice, nor was there any understanding as to which, if any, services might be compensated. The fact is, we never expected to receive payment in the amount of \$51,898.77, or anything close to it. The purpose of sending the invoice was not to request payment in full, but to convey the value of the services we had provided from May 2004 through June 15, 2005, and to invite an offer to pay some portion of that value.

By the fall of 2005, Verrill Dana had been working on issues related to MCCA for nearly 18 months without payment nor any clear promise of payment. Nonetheless, out of our commitment to the issues, we continued to work with arts and cultural organizations throughout this period. Finally, in November of 2005, Verrill Dana received a check from the Alliance in the amount of \$12,000. The payment was not accompanied by information clarifying the specific services intended to be covered, nor did Verrill Dana ever receive any verbal or written statements from MCCA confirming retention for a specific purpose, time period, or service.

It was not until we received the check for \$12,000 in November 2005 that we knew with any certainty that we had a client, and that we would be compensated for some portion of our services. Following receipt of payment, however, we were in no way concerned that the payment would trigger a duty for us to register on a retroactive basis as lobbyists for MCCA for two reasons. First, we were confident that we had not reached 8 hours of lobbying activities in any given month. Second, under Verrill Dana's accounting system, payments are applied first to the oldest recorded time entries, and the value of the November payment was insufficient to cover the value of services provided prior to the commencement of the 2005 legislative session, which services included almost no activities meeting the definition of lobbying.

December 2005 – November 2006

In 2006, we continued to provide assistance to MCCA with respect to the New Century Program during the "short session" of the Legislature. While there still was no signed retention agreement, Verrill Dana received clarification from MCCA that our primary goal was to provide strategic and monitoring services for MCCA, not services constituting lobbying. From December 2005 through May 2006, Verrill Dana did not receive any payment, and only recorded 19.2 total hours spent on activities defined as "lobbying." (Ex. 6).

Following the session, in May 2006, at the request of Mr. Cheever, we sent a second invoice to MCCA. (Ex. 2) This invoice carried forward the previous balance due after the \$12,000 payment, which was \$39,898.77, and added a late charge (which was omitted from

subsequent invoices). In September 2006, we sent a third invoice to Mr. Cheever, also at his request, that reflected the previous balance of \$39,898.77 and added \$45,647.50 for the value of services provided from June 16, 2005 to July 1, 2006, plus costs of \$736.04, resulting in a total bill of \$86,282.31. (Ex. 3) As with the prior invoices, the amounts recorded reflected the actual value of time spent on matters related to MCCA consistent with the firm's practice of recording all time entries, whether billable or not. Again, we did not expect to receive payment in full or anything close, and we specifically noted our expectation that some portion would be provided on a *pro bono* basis, but we nonetheless wanted to convey the value of the services we had provided and give MCCA some basis for discussing what an appropriate payment might be. As a result of these discussions, we ultimately agreed in late 2006 to reduce the balance owed for services provided through November 30, 2006 to \$15,000. In other words, for the period from May 1, 2004 through November 30, 2006, Verrill Dana agreed to treat \$71,282.31 as *pro bono* services.

#### December 2006 – June 2007

In a further attempt to formalize the relationship between Verrill Dana and MCCA, on December 21, 2006, we sent an engagement letter to Mr. Cheever proposing a fee agreement for services to be provided to MCCA from December 1, 2006 through June 30, 2007. (Ex. 4) According to the terms of the proposed retention letter, Verrill Dana would assist MCCA with respect to several pending legislative matters, but our services would once again focus on monitoring and strategic activities as opposed to lobbying activities. As described in the scope of services in the letter, Verrill Dana would engage in activities that included: advice to MCCA members; participation in meetings; media outreach; and grassroots efforts. The letter also indicated that Verrill Dana would advise MCCA regarding its direct outreach to the Legislature. We proposed a flat fee of \$16,500, to be paid in six monthly installments of \$2,750 each. As with prior proposed retention letters, this proposal was never signed.

In February 2007, we sent our last invoice that reflected the \$15,000 balance as of November 30, 2006, plus the proposed \$16,500 fee going forward. (Ex. 5) This invoice did not reflect a MCCA check we received from Mr. Cheever in January 2007 in the amount of \$2,500, which was applied to the previous balance as of November 30, 2006 of \$15,000. We subsequently received payments from the Maine Humanities Council for \$8,000 and the Maine Historical Society for \$6,000, leaving \$15,000 due (and ultimately written off as *pro bono*).

#### Summary of Services Provided and Funds Received

In sum, between May 2004 and the present, Verrill Dana provided services worth \$130,877.50 (\$68,730 + \$45,647.50 + \$16,500), and also incurred \$1,025.06 in costs, for a total value of \$131,902.56. We received payment of \$14,500 from MCCA and \$14,000 from other private organizations for a total of \$28,500, leaving \$103,402.56 in unpaid services that were provided *pro bono*. Our records show that activities defined as "lobbying" accounted for approximately 16% of the total services Verrill Dana provided, and in no calendar month did such activities reach reportable thresholds. (Ex. 6)

**Responses to Numbered Requests for Information**

Request #1. Please see attached spreadsheet (Ex. 6) which states the total number of hours that we worked in each month, and also separates out the number of hours we spent on lobbying activities (as defined in 3 M.R.S.A. § 312-A(9)) and other activities in each month.

To compile this spreadsheet, each individual timekeeper reviewed his or her time entries as recorded in a single account and categorized each activity defined as lobbying. In all cases, we were conservative in terms of what we classified as lobbying—that is, we have attempted to err on the side of allocating more time to lobbying, not less. By way of example, in some cases we have classified conversations with private individuals about communications with covered officials, or classified administrative functions such as collating handouts to legislators as “lobbying.” Likewise, conversations with covered officials regarding general matters of arts and culture, unrelated to pending legislation, was typically categorized as “lobbying.”

As you can see from the attached spreadsheet, Jim Cohen worked a total of 185.6 hours, with 37.9 hours, or 20% of his time, spent on activities defined as lobbying. Mike Saxl worked a total of 413.8 hours, with 65.1 hours, or 16% of his time, spent on activities defined as lobbying. Other timekeepers spent only 6.9 hours total lobbying out of 101.8 hours worked. These numbers reflect all our time spent, regardless of actual compensation.

Request #2. Please see response to Request #1.

Request #3. As a general rule, when we are employed by a client to perform services that are likely to include lobbying, we set up in advance separate billing ledgers for lobbying and non-lobbying activities. As we record our time, we record it in the appropriate ledger. When invoices are prepared, the individual timekeepers review the invoices to make sure that activities are recorded in the correct ledger. As an additional check, the billing attorney responsible for the client’s account also reviews the entries. We also have a dedicated staff person who coordinates and conducts additional review of bills. Only after these reviews are completed is a final invoice prepared, and any amounts recorded on the lobby ledger are disclosed to the Ethics Commission on a monthly, and then annual basis. Verrill Dana registers for numerous clients every year, and the firm has a strong track record of timely and thorough lobbyist filings. Jim and Mike are currently registered as lobbyists for at least seventeen clients. In fact, even though we are not required to file in months where lobby activities do not exceed 8 hours, it is not uncommon for us to do so. If we had been required to file as lobbyists in this instance, we certainly would have complied. We are very proud of the work we have done to support arts and culture in Maine. In short, we believe in full disclosure, we have a strong compliance record, and we have a strong administrative methodology to assure complete compliance with Maine law.

In this case, subsequent to May 2004, we did not set up separate billing ledgers for lobbying and non-lobbying activities related to the New Century Program because we had not been hired by a client to engage in lobbying services and we did not expect to get paid for lobbying. Even when we were paid in November 2005 and January 2007, we were not paid for

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lobbying—we were paid a small amount which did not come close to compensating us for all of our non-lobbying services (the bulk of what we did for MCCA) and which, when applied under Verrill Dana's accounting system, did not even cover those months prior to the start of the 2005 legislative session.

Request #4. Verrill Dana regards its internal time records as proprietary work product and as communications protected by the attorney-client privilege. We appreciate the Commission staff's desire to verify the accuracy of the spreadsheet we are providing in response to Requests #1 and 2, and we want to do everything we can to assure the Commission that we are accurately recording our time and making all appropriate reports, but we cannot disclose our time records. We believe that we would be able to reassure the Commission staff of the accuracy of our records by answering questions as to whether we classify certain types of activities as lobbying, without revealing privileged or proprietary information. We would be happy to do so in a meeting with the Commission's staff, if that is desired.

Request #5. Up until "Services Provided in 2007," the information contained in the section of your letter entitled "Discounted and Paid Services" appears to be accurate (except where inconsistent with the summary provided at the outset of this letter). The summary related above should also clarify some of these events.

Under the Section entitled "Services Provided in 2007," it is important to note that no one signed the proposed retention letter dated December 21, 2006. It is also correct that in February 2007, we billed a combined total of \$31,500: \$15,000 for services performed on or before November 30, 2006, and \$16,500 for services performed after that date. Around the time we sent this invoice, we received a \$2,500 payment from MCCA in January 2007 which was applied to the \$15,000 due for services performed on or before November 30, 2006. Later in 2007, we received \$8,000 from the Maine Humanities Council and \$6,000 from the Maine Historical Society for a total of \$14,000. That left \$15,000 due on the February 2007 invoice, which amount has since been written off.

We would like to address a statement from your November 15 letter that should be clarified to ensure accuracy. On page 2, the last sentence of the second full paragraph, you state that the auditor expressed a concern that the Cultural Affairs Council engaged the hiring of Verrill Dana. The auditor's suggestion that the Council hired Verrill Dana is inaccurate. At no point did Verrill Dana work for the Council. Verrill Dana collaborated with the Council on issues of interest to the Council, but the Council was never Verrill Dana's client.

Request #6. We believe that we were not required to register as lobbyists for two independent reasons: (1) neither of us reached the 8-hour reporting threshold in any calendar month; and, (2) we were not compensated for lobbying services. Because we did not engage in direct advocacy for more than 8 hours in a month, we would not have been required to register as lobbyists even if we had been fully compensated for the services we provided. In addition, because we were compensated such a small amount relative to the total value of services we provided (most of which were not lobbying), and because the payments we received were

**Jonathan Wayne, Executive Director**

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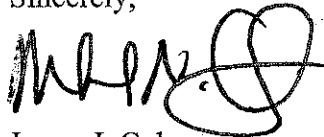
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applied to the oldest services first, we believe that any compensation we received would not even cover our non-lobbying work. Therefore, even if we had reached the reporting threshold in some months, we would not have been required to register as lobbyists because we would not have been compensated for our time spent lobbying, a key requirement under Maine law.

Request #7. The compensation we received with respect to LD 793 was entirely unrelated to our work related to the New Century Community Program. Our work regarding LD 793 was for an unincorporated association called the Joint Library Legislative Committee, and the bulk of our services constituted legislative monitoring and strategic advice. Services constituting direct communications with covered officials fell well short of reportable thresholds.

To conclude, we thank you for the opportunity to clarify the record regarding our work in support of arts and culture in Maine. We are very proud of the work we have done. We believe we have helped make an impact not only in generating seed funding for arts and culture in Maine, but also in organizing the creative economy and creating a broader understanding of its role in Maine's future. This has been an exciting time in Maine for arts and culture. We have been recognized nationally for our work and have worked many hours training advocates in Maine and across the country. We look forward to continuing to contribute our time and effort to strengthen the role of arts and culture in Maine.

Sincerely,

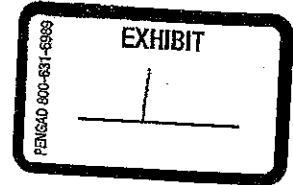
A handwritten signature in black ink, appearing to read "James I. Cohen", with a large, stylized flourish at the end.

James I. Cohen

Michael V. Saxl

# Verrill Dana LLP

Attorneys at Law



HONORABLE MICHAEL V. SAXL  
JAMES I. COHEN, PARTNER  
msaxl@verrilldana.com  
jcohen@verrilldana.com

ONE PORTLAND SQUARE  
PORTLAND, MAINE 04112-0586  
207-774-4000 • FAX 207-774-7499  
www.verrilldana.com

July 15, 2005

Maine Community Cultural Alliance  
Attn: Stephen J. Podgajny  
23 Pleasant Street  
Brunswick, ME 04011

Re: Legislative and Outreach Services from May 2004 - June 18, 2005

Dear Steve:

As you know, we have been engaged in an on-going effort to shape a bold legislative strategy for the members of the Cultural Affairs Council (CAC). During this time, at the request of members represented by the CAC, we have greatly increased the scope and magnitude of our work. This document outlines the services we have provided to the CAC members -- and its new advocacy arm, the Maine Community Cultural Alliance (MCCA) -- and services we have been asked to provide through the close of the 2005 legislative session. These services can be divided into two distinct components: (1) services provided to MCCA members prior to November 1, 2004, and (2) services from November 1, 2004 through the conclusion of the 2005 session of the Maine Legislature on June 18, 2005. Services related to the period following the 2005 legislative session would need to be addressed separately.

During the last several years, we have accomplished much in terms of General Fund contributions to the New Century Community Program, bond funding for certain library and technology-related projects, and more recently funding for the Pine Tree Zone demonstration project. Even more recently, we have begun to develop a strategy for stable operational funding and substantial bond contributions to cultural infrastructure. The efforts have been and will continue to be substantial, but so are the potential opportunities for cultural organizations and the state as a whole.

You should note that we have not worked for the member agencies pursuant to a specific fee agreement since April of 2004, which is when the prior agreement expired. That agreement with the Maine Library Association was for \$12,500 and covered our services related to the 2004 Legislative session. During that time, the actual value of our services exceeded \$20,000. Since that session concluded in April of 2004, we have essentially been working with clear but informal understanding that we would be compensated for our services. This seemed appropriate

for three primary reasons. First, during this time period we have been asked to become involved in a wide array of matters, but the matters have not been predictable or easily subject to advance quantification of costs. Second, given the delays we experienced in obtaining final payment of the prior fee agreements (final payment was not received until this past fall), it seemed more appropriate to postpone the delivery of a new bill until the old bill had been paid. Third and finally, for much of the last year, discussions have been underway regarding the formation of the Maine Community Cultural Alliance, which organization was viewed as the appropriate vehicle for handling disbursements with respect to outside consulting services. The fact that MCCA is only recently "getting off the ground" is perhaps the most important reason we have not sent out a formal invoice until now.

### INVOICE FOR SERVICES

**May - November, 2004.** Our services for this five month period fell within five basic categories during this time period, which we will describe in greater detail below. The first covered service relates to implementing the 2003 Library Bond. This category of service included meetings with the Attorney General and State Treasurer, development of appropriate descriptions of agency activity, and internal meetings and correspondence with the agencies to develop the appropriate strategy. The value of our services related to this item was \$3,345.00.

The second area of work related to advance planning for the 2005 Legislative Session, and beyond. This aspect of our work involved development of a legislative strategy, work with members of the Legislature and Administration, and a number of internal meetings and discussions with the agencies. The value of our services for this item was \$3539.00.

The third area of work related to developing a strategy to coordinate the New Century Program and the Cultural Affairs Council with the Governor's Creative Economy efforts. This work included meetings with DECD staff, the Governor, internal meetings, discussions, and correspondence with the agencies, and strategic planning. The value of our time for this area was \$1,438.00.

The fourth area of work related to implementing the Pine Tree Zone demonstration project. The aspect involved working with DECD staff and member agencies to develop a methodology for the program, plus working with the agencies to structure the program. We also provided assistance on this project in terms of messaging and outreach to the Governor and his staff. The value of our time for this service was \$1,674.00.

Finally, we worked with the agencies regarding the possibility of a special legislative session related to bonds during the summer of 2004. Our services in this area included correspondence and conversations with members of the Legislature and the Governor's Office as well as the member agencies. The value of our time for this service was \$285.00.

Adding up each of the foregoing services yields a total of \$10,281.

**November 1, 2004 - June 18, 2005.** Specifically, our efforts during this nearly eight month period have been focused on crafting a bond and General Fund strategy to meet the



financial needs of Maine's cultural institutions. Our efforts in this time period can be viewed in two distinct phases: (1) Phase I -- preparation for the 2005 legislative session; and (2) Phase II -- implementation of legislative plan.

**Phase I.** During November and December of 2004, we worked with MCCA and CAC members to establish our legislative plan. Our services included the following:

- Drafting a legislative plan
- Assisting members regarding the rollout of the Pine Tree Zone demonstration project
- Cultivating relationships with emerging leaders on cultural agency funding issues
- Facilitating meetings with Administration officials, including Governor Baldacci
- Working internally with CAC members regarding legislative strategy, related meetings, and teleconferences
- Forming MCCA.

Our fees related to Phase I totaled \$8,306.00.

**Phase II.** Phase II covers our services for members during the Legislature's 2005 regular session, which adjourned on June 18, 2005. Our services relate primarily to LD 786, LD 766, LD 521, LD 192, LD 756, and LD 1001, including specific activities identified in the following outline:

<u>TASK</u>	<u>DESCRIPTION</u>
Work with Baldacci administration	Schedule and participate in meetings with the Baldacci Administration. Continue meetings with Administration on a weekly basis to track progress. Cultivate support of Governor and members of the Administration.
Identify legislative sponsors	Provide on-going support to Legislators and Staff throughout the session.
Work with committees of jurisdiction and cultivate legislative champions	Target and work with key committee members. Help organize grassroots contacts to Legislature. Monitor committee action. Educate Legislators regarding the New Century Program and Creative Economy.
Provide legal support to establish MCCA	Formation of MCCA and by-laws. (IRS filing to be addressed separately).
Assist with press relations	Work with press subcommittee; assist with press events and participate in press contacts.
Coalition building	Meetings with University, R&D, Transportation, and other parties.
Attend CAC meetings, regular e-mail and telephone correspondence	

Prepare for and execute Floor fight      Develop and implement floor strategy. Lobby individual members, leadership, and coordinate agency lobbying. Work with coalition partners. Use entire VD/MSS team.

Our fees related to Phase II totaled \$50,532.00.

**Discount.** Obviously, we recognize that \$68,813 for all work for the thirteen months from May, 2004 through June 18, 2005 is a substantial amount of money for a new organization such as MCCA. That said, we have worked hard to focus our activities on tasks that add value, avoid overlap, and advance the goal of substantially increasing the State's financial contribution to cultural institutions. In addition, our hope is to work collaboratively with MCCA regarding the expectations of members about the services we provide, and offer a discount of 25% off of our normal rates. Applied to the fees outlined above, our fee for the entire thirteen month period ending June 2005 would total \$51,609.75. We believe this total is consistent with the fee expectations we have indicated to CAC members over the past several months.

### CONFLICTS OF INTEREST

On a separate track, it is important that we spend a moment to outline issues related to conflicts of interest, which is important on a going forward basis. Generally speaking, the scope of our representation of MCCA is limited to the services performed above as they may continue into the future. We are also engaged to provide basic corporate advice to MCCA related to its good standing as a corporate entity. If MCCA wishes to engage Verrill Dana, LLP and Maine Street Solutions for other services, we would be pleased to provide such services on a matter by matter basis upon mutual agreement.

Please note that Verrill Dana and Maine Street Solutions have a number of existing clients whose interests may be affected by the activities of the Maine Community Cultural Alliance. It is possible that one or more of these clients may ask us to advocate positions adverse to the positions that are adverse to positions taken MCCA or its members. We reserve the right to accept those engagements to the extent permissible under the Maine Bar Rules. Under certain circumstances, the Maine Bar Rules may compel the Firm to withdraw from the representation of one or more parties where it is not possible to continue the concurrent representation of the parties. In such cases, it is possible that we will have to withdraw from our representation of MCCA. If at any time we determine that our work for MCCA creates a conflict with an existing client, we reserve the right to withdraw from this engagement subject to our disclosure obligation to MCCA.

### CONCLUSION

We hope this letter accurately spells out the past invoice and the future scope of services that Maine Street Solutions and Verrill Dana provide to MCCA. Obviously, if we need to modify these terms or the invoice in any way, please let us know.

Maine Community Cultural Alliance

July 15, 2005

Page 5

Once again, we have very much appreciated the opportunity to work with MCCA and member cultural institutions, and we look forward to working with you in the months and years ahead.

Sincerely,

A handwritten signature in black ink, appearing to be "J. Cohen", written over the printed name.

James I. Cohen

Michael V. Saxl

JIC/mhw

Enc.

P:\jcohen\MCCA\Rention Ltr 2005 042005.doc.

**Verrill Dana**  
Attorneys at Law

One Portland Square  
P.O. Box 586  
Portland, Maine 04112-0586

Telephone: (207) 774-4000  
Facsimile: (207) 774-7499  
E-Mail: [advicet@verrilldana.com](mailto:advicet@verrilldana.com)

Employer ID No. 01-0176171

TO: MAINE COMMUNITY CULTURAL ALLIANCE  
ATTN: STEPHEN J. PODGAJNY  
23 PLEASANT STREET  
BRUNSWICK, ME 04011

INVOICE 349150

July 15, 2005

RE: LEGISLATIVE

34646-4668

**COPY**

Legislative services for the period May 2004 through June 15, 2005, including all services related to implementing the 2003 Library Bond, coordination with the Governor's Creative Economy efforts, implementing the 2004 Pine Tree Zone demonstration project, formation of Maine Community Cultural Alliance, preparing for a potential special legislative session regarding bonds during the summer of 2004, preparation and implementation of a broad legislative plan to obtain General Fund and bond money to continue and expand the New Century Community Program, plus related meetings, document preparation, teleconferences, grassroots efforts, strategy development, and legislative outreach activities.

Total Fees	\$68,730.00
Less 25% Discount	-\$17,120.25
Sub Total	\$51,609.75
Costs Incurred thru June 15, 2005	\$289.02
Amount Due:	\$51,898.77

Payment is due upon receipt of this invoice. A late charge of 1-1/2% per month will be assessed upon all balances that remain unpaid for more than 30 days after the invoice date. Verrill Dana, LLP is committed to providing quality legal services. If you have any questions concerning this invoice or the services to which it relates, please contact your principal attorney or David E. Warren, Managing Partner.

Please detach this portion and return in the enclosed envelope with your payment. Thank you.

**Verrill Dana**  
Attorneys at Law

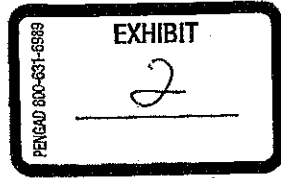
One Portland Square  
Portland, Maine 04112-0586

July 15, 2005  
INVOICE 349150

MAINE LIBRARY ASSOCIATION  
LEGISLATIVE  
34646-4668

Amount Due: \$51,898.77

Amount Enclosed: \$\_\_\_\_\_



VERRILL DANA LLP  
ONE PORTLAND SQUARE  
P.O. BOX 586  
PORTLAND, MAINE 04112-0586  
207/774-4000

May 17, 2006  
PAGE 1

MAINE COMMUNITY CULTURAL ALLIANCE  
ATTN: DAVE CHEEVER, TREASURER  
P.O. BOX 56  
AUGUSTA, MAINE 04338

RE: LEGISLATIVE  
-----  
CLIENT/CASE NO. 34646-4668/JIC

STATEMENT OF BALANCES DUE ON OUTSTANDING INVOICES

Amount due as of previous statement: \$51,898.77  
Less payments received since previous statement: -\$12,000.00  
-----  
Balance Forward: \$39,898.77  
Summary of Open Invoices  
-----

Date	Invoice	Amount	Late	Credits	Balance
07/15/05	349150	\$51898.77	\$ .00	\$12000.00	\$39898.77
Current Period Late Charges:					\$598.48
TOTAL DUE:					\$40,497.25

# Verrill Dana<sup>LLP</sup>

Attorneys at Law

One Portland Square  
P.O. Box 586  
Portland, Maine 04112-0586

Telephone: (207) 774-4000  
Facsimile: (207) 774-7499  
E-Mail: advice@verrilldana.com

Employer ID No. 01-0176171

EXHIBIT

3

TO: MAINE COMMUNITY CULTURAL ALLIANCE  
ATTN: DAVE CHEEVER, TREASURER  
P.O. BOX 56  
AUGUSTA, MAINE 04338

INVOICE 364833

September 29, 2006

RE: LEGISLATIVE

34646-4668

 COPY

For legislative services rendered from June 16, 2005 to July 1, 2006 regarding bonds and General Fund appropriations for the New Century Community Program and related cultural legislation, including but not limited to attendance at meetings; preparation of documents, telephone conferences, e-mails, memorandums, and correspondence with MCAA members, Legislators and staff, the Governor and staff, and coalition partners; assistance with preparation and filing of organizational documents, by-laws, and 501 status for MCCA; presentations to coalition partners related to cultural advocacy; assistance with administrative appointments; development of long term funding strategy and Cobscook project.

Legislative Fees:	\$45,647.50
Costs Incurred:	\$736.04
	-----
Current Charges:	\$46,383.54
Previous Balance:	\$39,898.77
	-----
Amount Due:	\$86,282.31

Payment is due upon receipt of this invoice. A late charge of 1-1/4% per month will be assessed upon all balances that remain unpaid for more than 30 days after the invoice date. Verrill Dana, LLP is committed to providing quality legal services. If you have any questions concerning this invoice or the services to which it relates, please contact your principal attorney or David E. Warren, Managing Partner.

Please detach this portion and return in the enclosed envelope with your payment. Thank you.

September 29, 2006  
INVOICE 364833

## Verrill Dana<sup>LLP</sup>

Attorneys at Law

One Portland Square  
Portland, Maine 04112-0586

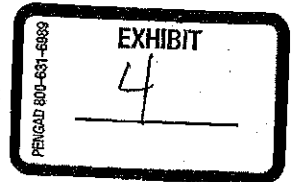
MAINE COMMUNITY CULTURAL ALLIANCE  
LEGISLATIVE  
34646-4668

Amount Due: \$86,282.31

Amount Enclosed: \$ \_\_\_\_\_

# Verrill Dana<sub>LLP</sub>

Attorneys at Law



JAMES I. COHEN  
[jcohen@verrilldana.com](mailto:jcohen@verrilldana.com)  
MICHAEL V. SAXL  
[msaxl@verrilldana.com](mailto:msaxl@verrilldana.com)

45 MEMORIAL CIRCLE  
AUGUSTA, MAINE 04332-5307  
207-623-3889 • FAX 207-622-3117  
[www.verrilldana.com](http://www.verrilldana.com)

December 21, 2006

Maine Community Cultural Alliance  
c/o Mr. David Cheever  
P.O. Box 184  
Augusta, ME 04330

Dear Dave:

Thank you for selecting Maine Street Solutions, LLC and Verrill Dana, LLP to provide legislative and strategic consulting services to the Maine Community Cultural Alliance (the "Alliance") with respect to the First Regular Session of the 123<sup>rd</sup> Maine Legislature. This letter will confirm the scope of our work and address the basic terms of our engagement.

**Scope of Services.** Based on our discussions with you, we understand that the scope of our engagement is to provide legislative and strategic consulting services to the Maine Community Cultural Alliance related to the following matters: (1) passage of legislation calling for a long-term bond issue for the New Century Community Program; and (2) obtaining a General Fund appropriation for the New Century Community Program in the Budget. These services will cover the time period from December 1, 2007 through June 30, 2007.

As far as specific services are concerned, we will advise the Alliance on strategic issues related to obtaining state funding for the New Century Community Program, including advising the Alliance regarding grassroots efforts and organizing contacts to lawmakers; periodic participation in meetings and phone calls with members of the Alliance and partners with the Cultural Affairs Council; assisting the Alliance and its partners in arranging and participating in meetings with legislative leadership and the Administration; advising the Alliance and its partners regarding media outreach and testimony before Legislative Committees. In agreeing to receive these services, the Alliance and its partners will designate one or more points of contact to allow Verrill Dana and MSS to simplify communications to the Alliance and its partners. The Alliance and its partners will also take the lead in document preparation, grassroots contacts and list development, and the holding of periodic meetings with members to advance the goals of the Alliance regarding its legislative agenda.

**Fee Arrangement.** For the specific matters identified above, we will bill the Alliance a flat fee of \$16,500 for the period to begin December 1, 2006 and end June 30, 2007. This will be billed in six monthly installments of \$2,750 per month from January through June, 2007. In

Letter to Maine Community Cultural Alliance

December 21, 2006

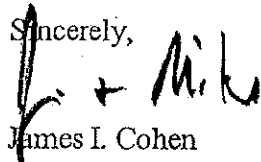
Page 2

addition, if our costs exceed 10% of the flat fee, we reserve the right to renegotiate the foregoing fee. The Alliance is responsible for all disbursements incurred for expenses, including, among other things, long-distance charges, filing fees, travel expenses, and subcontracting fees. For your information, we have enclosed a copy of the Statement of Billing Policies of Verrill Dana, LLP. If the scope of our engagement changes in any substantial manner, please note that we would need to modify the terms of this retention agreement accordingly.

**Conflicts of Interest:** As we have discussed, Maine Street Solutions, LLC and Verrill Dana, LLP have a number of existing clients whose interests may be adverse to Alliance from time to time, including clients such as ATT/SBC Communications, AOL, or Verizon Wireless. It is possible that one or more of those clients may ask us to advocate positions adverse to the Alliance in the future. In accepting this engagement, we understand that our representation of the Alliance is limited to the scope of services noted above, and we reserve the right to accept engagements in other matters that may be adverse to the Alliance to the extent permissible under the Maine Bar Rules. We would ask for your consent, consistent with the Maine Bar Rules, to continue to represent these other clients on unrelated matters that might be inconsistent with the interests of the Alliance, including with respect to positions we might take for either entity on legislation before the Maine Legislature. Overall, we will endeavor to ensure that the interests of the Alliance are protected within the requirements of the Maine Bar Rules, and we will work to communicate with you in the event any issues arise that could pose a potential conflict of interest.

**Conclusion.** We hope this letter adequately spells out our agreement for legislative and consulting services for the upcoming session. Assuming it does, we would appreciate if you could sign below and return a copy to us for our records. Once again, we have very much enjoyed working with the Alliance and look forward to working with you in the weeks and months ahead!

Sincerely,

  
James I. Cohen  
Michael V. Saxl

MVS/evd  
Enclosure

Seen and agreed to:  
MAINE COMMUNITY CULTURAL ALLIANCE

By: \_\_\_\_\_  
David Cheever, Clerk

Date: \_\_\_\_\_



Letter to Maine Community Cultural Alliance  
December 21, 2006  
Page 3

cc: Gary Nichols  
Erik Jorgensen  
Alden Wilson

## VERRILL DANA, LLP

### Statement of Representation and Billing Policies

Set forth below is a summary of Verrill Dana's standard policies with respect to legal fees and expenses.

Representation. Our representation will commence upon the opening of a billing account and shall terminate upon the issuance of the last statement for services rendered in this matter, unless our engagement letter indicates otherwise.

Legal Fees. Consistent with ethical standards applicable to our lawyers, it is our policy to charge reasonable fees for legal services. Numerous factors go into determining the fee for a given matter, the primary factors normally being our customary hourly rates and the number of hours expended. Our customary hourly rates vary according to the experience and expertise of the attorney or paralegal performing a particular service. Our present hourly rates, with certain exceptions, fall within the following ranges:

Partners	\$195 - \$450 per hour
Of Counsel	\$180 - \$475 per hour
Associates	\$125 - \$250 per hour
Paralegals	\$ 50 - \$170 per hour

We normally review and, if appropriate, revise our hourly rates on an annual basis. Adjustments are usually effective as of January 1, the beginning of our fiscal year.

Although hourly rates and number of hours are the primary factors employed in determining fees, additional factors may be considered, including: the difficulty of a particular project and the expertise required, the result obtained, the efficiency with which the result is obtained, and the extent to which a project requires special or expedited attention or precludes other legal work.

Expenses. We also impose reasonable charges for costs incurred in connection with a particular matter. These include, without limitation, charges for long distance telephone calls, fax transmissions (but not receipts), photocopying, courier services, special mailing costs, travel expenses and mileage, computer research services, court costs and deposition charges incurred in connection with litigation, corporate filing and real estate recording fees, and secretarial overtime.

Frequency of Billing. We normally submit monthly statements for services rendered. These statements generally include a description of the services performed, and a calculation of legal fees and expenses. If a client's special needs require a particular form of statement, we will make every reasonable effort to accommodate those requirements.

Payment. We ask that our clients remit payment on our statements promptly. A late charge of 1.5% per month will be assessed upon balances which remain unpaid for more than 30 days from the date of the invoice. To the extent consistent with ethical requirements, if an account is outstanding for more than 30 days, we reserve the right to terminate work until the account is brought current. While we regret ever having to take such a step, we feel that it is only fair to our clients who have paid promptly for our services to make certain that their legal needs have our undivided attention.

Retainers. For new clients, as well as for special projects for existing clients, we generally request an appropriate retainer as a deposit against fees and expenses to be incurred. Such retainers are credited against charges on a monthly basis, and we generally ask that the retainer be renewed on a monthly basis. Any balance remaining from the retainer at the conclusion of a project will be refunded promptly.

Fee Disputes. If a dispute arises with regard to fees, you have the exclusive right to invoke arbitration under Maine Bar Rule 9, Fee Arbitration. If you do not exercise your right to invoke fee arbitration under Rule 9 within 30 days after receiving written notice of your right, we may seek arbitration under the Maine Uniform Arbitration Act to resolve the fee dispute.

**Verrill Dana**<sub>LLP</sub>  
Attorneys at Law

One Portland Square  
P.O. Box 586  
Portland, Maine 04112-0586

Telephone: (207) 774-4000  
Facsimile: (207) 774-7499  
E-Mail: advice@verrilldana.com

Employer ID No. 01-0176171

TO: MAINE COMMUNITY CULTURAL ALLIANCE  
ATTN: DAVE CHEEVER, TREASURER  
P.O. BOX 184  
AUGUSTA, MAINE 04338

INVOICE 369218

February 8, 2007

RE: LEGISLATIVE

34646-4668

For services rendered in the above-referenced matter

Balance of Legislative Fees through  
November 30, 2006 per agreement with  
client:

\$15,000.00

Legislative Fees for December 1, 2006  
to June 30, 2007 per retention letter  
dated December 21, 2006

\$16,500.00  
-----

Amount Due:

\$31,500.00

Payment is due upon receipt of this invoice. A late charge of 1-1/2% per month will be assessed upon all balances that remain unpaid for more than 30 days after the invoice date. Verrill Dana, LLP is committed to providing quality legal services. If you have any questions concerning this invoice or the services to which it relates, please contact your principal attorney or David E. Warren, Managing Partner.

Please detach this portion and return in the enclosed envelope with your payment. Thank you.

February 8, 2007  
INVOICE 369218

**Verrill Dana**<sub>LLP</sub>  
Attorneys at Law

One Portland Square  
Portland, Maine 04112-0586

MAINE COMMUNITY CULTURAL ALLIANCE  
LEGISLATIVE  
34646-4668

Amount Due: \$31,500.00

Amount Enclosed: \$ \_\_\_\_\_

MAINE COMMUNITY CULTURAL ALLIANCE  
TIME ENTRIES  
MAY 2004 THROUGH SEPTEMBER 2007

EXHIBIT

tabbles

6  
(2)

Month	Year	JIC			MVS			Others		
		Total	Lobby	Other	Total	Lobby	Other	Total	Lobby	Other
5	2004	3.1	0.2	2.9	2.2	0	2.2	0	0	0
6	2004	5.7	0	5.7	11.5	0	11.5	0	0	0
7	2004	8.2	1	7.2	9.6	0	9.6	0	0	0
8	2004	0.7	0	0.7	0.5	0.3	0.2	0	0	0
9	2004	3.4	0.4	3	1.5	0.2	1.3	0	0	0
10	2004	5.8	0	5.8	7.9	1.5	6.4	0.5	0	0.5
11	2004	3.2	0	3.2	8.9	0.6	8.3	0.9	0	0.9
12	2004	1.6	0.1	1.5	22.4	7.1	15.3	7.9	0	7.9
1	2005	13.2	3.4	9.8	11.5	1.6	9.9	5.2	0	5.2
2	2005	20.1	7.7	12.4	41	4.7	36.3	6.5	0	6.5
3	2005	14.8	3.1	11.7	32.8	6.8	26	3.3	0	3.3
4	2005	12.7	3.3	9.4	14.6	2.4	12.2	5.8	0	5.8
5	2005	18.6	6.9	11.7	22.1	6.6	15.5	13.3	0	13.3
6	2005	17	5	12	34.9	5.5	29.4	12.1	6.9	5.2
7	2005	5	1	4	19.6	6.7	12.9	24.1	0	24.1
8	2005	5.6	1	4.6	12.1	2	10.1	0.1	0	0.1
9	2005	6.9	0	6.9	7	0.3	6.7	1	0	1
10	2005	2.4	0	2.4	17.7	2.5	15.2	3.7	0	3.7
11	2005	4.1	0	4.1	10.2	1.4	8.8	2	0	2
12	2005	1	0	1	10.9	5.1	5.8	2.6	0	2.6
1	2006	6.1	1.7	4.4	19.9	3.5	16.4	9.1	0	9.1
2	2006	2.5	0.2	2.3	13.1	4.8	8.3	0	0	0
3	2006	1.7	0.8	0.9	11.3	2.6	8.7	0	0	0
4	2006	3.3	0	3.3	5.7	0.2	5.5	3.7	0	3.7
5	2006	0.7	0.3	0.4	1	0	1	0	0	0
6	2006	0	0	0	3.7	0	3.7	0	0	0
7	2006	0	0	0	22.1	0	22.1	0	0	0
8	2006	0	0	0	1.1	0	1.1	0	0	0
9	2006	0	0	0	3.1	0	3.1	0	0	0
10	2006	0	0	0	1.6	0	1.6	0	0	0
11	2006	0	0	0	3.9	0	3.9	0	0	0
12	2006	2.9	0.2	2.7	12.7	1.8	10.9	0	0	0
1	2007	3.8	0	3.8	3.3	0.2	3.1	0	0	0
2	2007	2.9	1.2	1.7	5.8	2.7	3.1	0	0	0
3	2007	1.6	0.8	0.8	1.1	0.6	0.5	0	0	0
4	2007	3.5	0.4	3.1	1.6	0.7	0.9	0	0	0
5	2007	0.4	0.2	0.2	0	0	0	0	0	0
6	2007	0	0	0	3.9	0	3.9	0	0	0
7	2007	1.6	0	1.6	0	0	0	0	0	0
8	2007	1.2	0	1.2	0	0	0	0	0	0
9	2007	0.3	0	0.3	0	0	0	0	0	0
TOTAL		185.6	38.9	146.7	413.8	72.4	341.4	101.8	6.9	94.9



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

November 15, 2007

**By E-Mail and Regular Mail**

James I. Cohen, Esq.  
Verrill Dana, LLP  
One Portland Square  
Portland, ME 04112-0586

Michael V. Saxl, Esq.  
Verrill Dana, LLP  
45 Memorial Circle  
Augusta, ME 04332-5307

Dear Gentlemen:

This letter is to request information which will assist the Maine Commission on Governmental Ethics and Election Practices in determining whether you conducted lobbying during late-2004, 2005, 2006, and 2007 which required you to register and file reports with the Commission as lobbyists. As explained below, failure to register and file required reports as a lobbyist is a violation of the Maine Lobbyist Disclosure Procedures Law. At the end of this letter, I make seven requests for information. Below I also explain the basis for this staff request so that it is understood by you and the members of the Commission without the need for a separate memorandum.

There is a good possibility that I will be scheduling this matter for consideration by the Ethics Commission members at their next meeting on December 7, 2007. At that meeting, I expect them to consider whether any further investigation is necessary, pursuant to Chapter 1, Section 5(2) of the Commission rules. Please provide your response to the requests no later than Thursday, November 29 so that it can be included in the packet of materials considered by the Commission for the meeting.

**Initiation of this Inquiry and Current Status**

On October 4, 2007, the Ethics Commission staff learned that the State Controller's office was performing an internal control audit of four state cultural agencies regarding the possibility that they circumvented administrative policies in order to pay for lobbying services. Because the subject matter of the audit intersected with the jurisdiction of this Commission (*i.e.*, the possibility of unreported lobbying), I contacted the State Controller to request a copy of the audit report when it was completed. No complaint has been filed regarding this matter.

On October 29, after receiving questions from news reporters regarding the Controller's audit report, I obtained a copy of the report. On the next day, October 30, the members

of the Ethics Commission held their scheduled monthly meeting. I briefed the Commission members on the audit report, and they authorized me to conduct preliminary fact-gathering including sending you a questionnaire. Later that day, you voluntarily telephoned me and offered to provide information needed by the Commission. On November 5, we obtained copies of the work papers for the Controller's audit, and on November 6 we interviewed David Cheever, the treasurer for the Maine Community Cultural Alliance. That same day, you provided me with your two responses to requests for information by the State Controller.

### **Controller's Audit Report**

In June 2007, the Controller's office received an allegation that some state cultural agencies had attempted to revive a private organization, the Maine Community Cultural Alliance, in order to pay for lobbying of the Maine Legislature from late 2004 to 2007. The focus of the audit appears to be on four independent commissions – the Maine Arts Commission, the Maine Historic Preservation Commission, the Maine Library Commission, and the Maine State Museum Commission. Three other organizations cooperated with the activities that are the subject of the audit: the Maine State Archives (a bureau of the Secretary of State's Office) and the Maine Humanities Council and the Maine Historical Society (private entities which may receive some public funding).

These seven offices take part in the Maine State Cultural Affairs Council. Under 27 M.R.S.A. § 555, the Council was created in 1989 to serve as a forum for interagency cooperation and planning among the cultural agencies. The alliance structure was intended to improve communications, enhance coordination of work, and facilitate planning and administration for each of the participating agencies. The chairs and vice-chairs of the seven agencies are the members of the Council, along with a chair that is appointed by the Governor. The Council has no staff other than the employees of the cultural agencies. The directors of these agencies are non-voting, ex officio members of the council. One of the concerns in the audit is that the directors of the four agencies – operating with others as a working group of the Cultural Affairs Council – encouraged the hiring of your firm for lobbying or other services without getting a formal authorization by a vote of the Council.

In their response to a draft version of the audit report, the four agency directors stated that that no public dollars had been spent on lobbying. You provided two responses to questions posed by the Controller's auditor on September 25, 2007 and October 3, 2007, in which you explain that you provided "legal and strategic services (largely pro bono)." (9/25/07 letter, page 1)

The final report contained findings that the agencies had deviated from standards for state government agencies in a number of respects. The audit report found:

- The agencies do not have a financial administrative structure sufficient to ensure compliance with state and federal policies.

- Public funds were used in an inappropriate manner. The agencies' transfer of public funds to a nonprofit organization to pay for legislative advocacy was not accurately reflected in the agencies' budgets. The audit report noted that amounts paid to the Maine Community Cultural Alliance were recorded in state accounting records as membership dues, but the organization did not have an adopted schedule for dues assessment.
- The procuring of your services did not comply with the procurement regulations for administrative agencies of the state of Maine.

The audit report made a number of recommendations regarding the financial and administrative oversight of the cultural agencies.

Any inappropriate use of public funds or circumvention of state procedures is a serious concern and is being given due consideration by other departments of state government. Those issues are not within the jurisdiction of this Commission. This inquiry is focused exclusively on whether you lobbied for the Maine Community Cultural Alliance (or any of the public or private cultural agencies named above) for more than 8 hours in a calendar month which would have required you to register as lobbyists.

### **Maine Community Cultural Alliance**

The audit documents suggest that the Maine Community Cultural Alliance was an active private organization in the 1990's. It was incorporated in December 2004 as a nonprofit corporation, with Jennifer Hoopes, Esq., of your firm listed as the incorporator and registered clerk. The statement of purpose in the Alliance's articles of incorporation described its activities as: "The primary activities of the corporation shall be to promote in the Maine legislature the importance of cultural resources in Maine, including museums, libraries, historic preservation, and the arts; and to lobby for increased funding for Maine cultural resources." The articles contemplated 3 - 20 members of a board of directors; however, no board members were ever formally identified in filings with the Secretary of State. In fact, the two annual reports filed with the Secretary of State by your firm indicate that the positions of corporation officers and directors were vacant in 2005 and 2006. The Alliance was administratively dissolved by the Secretary of State in 2007 for failure to file an annual report.

I interviewed David Cheever on November 6, 2007 to better understand the history of the Maine Community Cultural Alliance. He stated that in the summer of 2005 he was approached by the directors of the cultural agencies. They asked him to invite certain individuals to become board members of the Maine Community Cultural Alliance to promote cultural activities in Maine. Part of the financial activities of the Alliance, as proposed by the agency directors, would be paying down the debt already owed to your firm and to fund future advocacy efforts. Some of the individuals he contacted were interested in getting involved in an arts advocacy organization, but not in the particular conception suggested by the agency directors. Mr. Cheever stated that there were some

meetings with the agencies' directors to discuss the organization of the Alliance, but no board of directors ever met because one was never formed.

One aspect of this inquiry that is a little unusual is the lack of clarity as to who was your client. It is understandable that in November 2004, you expected the Maine Community Cultural Alliance to be a functioning organization. As time passed and you sent an engagement letter and invoices in July 2005, May, September, and December 2006, and February 2007, the absence of any organizational development could have raised concerns on your part as you continued to provide services. (The organization did not have a board or officers, and there was no formal authorization by a board of directors to retain your services.) For purposes of this request for information, the Commission staff will refer to the Maine Community Cultural Alliance as your client, although it is possible that the actual parties of interest for which you were providing legislative services were individuals, state agencies, or private nonprofit organizations associated with the Maine State Cultural Affairs Council.

### **Legal Requirements for Lobbyists to Register and File Reports**

The purpose of Maine's Lobbyist Disclosure Procedures Law is to provide the public with information about who has been paid to influence the legislative process.

The Legislature also recognizes that [citizens' petitioning of state government] must be carried out openly so that other citizens are aware of the opinions and requests made in this manner. Legislative decisions can fully reflect the will of all the people only if the opinions expressed by any citizen are known to all and debated by all, and if the representatives of groups of citizens are identified and their expenditures and activities are regularly disclosed. (3 M.R.S.A. § 311)

Individuals qualify as lobbyists if they have been employed by another party for the purpose of lobbying and if they have engaged in lobbying for more than 8 hours in a calendar month. The definition of lobbyist is:

**10. Lobbyist.** "Lobbyist" means any person who is specifically employed by another person for the purpose of and who engages in lobbying in excess of 8 hours in any calendar month, or any individual who, as a regular employee of another person, expends an amount of time in excess of 8 hours in any calendar month in lobbying. "Lobbyist" does not include a lobbyist associate. (3 M.R.S.A. § 312-A(10))

If an individual performs a limited amount of lobbying for a client which does not exceed 8 hours in a calendar month, the individual is not required to register as a lobbyist – even if the lobbyist has performed a large amount of “non-lobbying” services in a single month.



The Lobbyist Disclosure Procedures Law defines "Employer" and "Employment" as:

**5. Employer.** "Employer" means a person who agrees to reimburse for expenditures or to compensate a person who in return agrees to provide services. Employer includes any political action committee as defined in this section which communicates through or uses the services of a lobbyist to make campaign contributions or to influence in any way the political process.

**6. Employment.** "Employment" means an agreement to provide services in exchange for compensation or reimbursement of expenditures. (3 M.R.S.A. §§ 312-A(5) - (6))

Individuals who qualify as lobbyists must register with the Commission by filing a registration form (3 M.R.S.A. § 313) and must file monthly and annual lobbyist reports. (3 M.R.S.A. § 317)

As you are aware, the definition of "lobbying" for purposes of the Lobbyist Disclosure Procedures Law does not include many services which the lay public might presume are part of lobbyists' everyday work. The following definition was in effect through September 19, 2007:

**9. Lobbying.** "Lobbying" means to communicate directly with any official in the Legislature for the purpose of influencing any legislative action or with the Governor for the purpose of influencing the approval or veto of a legislative action when reimbursement for expenditures or compensation is made for those activities. It includes the time spent to prepare and submit to the Governor, a Legislator or a legislative committee oral and written proposals for, or testimony or analyses concerning, a legislative action. (3 M.R.S.A. § 312-A(9))

This definition does not include, for example, time spent by a lobbyist in meetings with a client discussing legislation; time which a lobbyist spends monitoring legislation; time spent in the State House waiting for an opportunity to communicate with an official or to monitor a legislative meeting; and time spent performing legal or quantitative research that is never provided to the Legislature or Governor. Even though these activities relate to legislation and are billable to a client (for lobbyists who charge on an hourly basis), for better or worse these activities fall outside the statutory definition of lobbying.

The definition of lobbying includes the qualifying clause "when reimbursement for expenditures or compensation is made for those activities." If someone is petitioning the Legislature outside of a paid employment relationship (*e.g.*, because they care personally about an issue of public policy), the communication is not lobbying.

The Commission is authorized to assess a penalty for any person who is required to register and file reports as a lobbyist and who fails to do so:

**1. Failure to file registration or report.** Any person who fails to file a registration or report as required by this chapter may be assessed a fine of \$100 for each person listed or who should have been listed on the lobbyist registration for every month the person fails to register or is delinquent in filing a report pursuant to section 317. The Commission may waive the penalty in whole or in part if the Commission determines the failure to register or report was due to mitigating circumstances. (3 M.R.S.A. § 319(1))

The basis for this inquiry is to gather facts necessary for the Commission members to determine whether you were required to register and file reports under 3 M.R.S.A. §§ 313 and 317, and, if so, whether any penalty should be assessed under 3 M.R.S.A. § 319(1).

#### **Discounted and Paid Services**

Based on the documents disclosed in the audit, the Commission staff has attempted to learn the history of your invoices for services rendered and your later decisions to discount those services. This section summarizes the staff's current understanding. Below, in Request #5 we invite you to correct any misperceptions.

*Services Provided Through June 15, 2005.* In mid- to late-2004, you entered into an understanding with the agency directors or others that you would provide services to the Maine Community Cultural Alliance relating to legislation and other matters. To the best of our knowledge, you did not propose a scope of engagement in writing in 2004 or 2005. On or around July 15, 2005, you mailed an invoice and a letter describing your services that had been provided through June 15, 2005. In the letter, you explained the timing of the invoice and stated that "we have essentially been working with [a] clear but informal understanding that we would be compensated for our services." The letter stated that \$68,813 worth of services were provided and "offer[ed] a discount of 25% off of our normal rates." With regard to the discounted fee of \$51,609.75, you stated that "We believe this total is consistent with the fee expectations we have indicated to CAC [Cultural Affairs Council] members over the past several months." At the conclusion of the letter you stated: "Obviously, if we need to modify these terms or the invoice in any way, please let us know."

On or around November 5, 2005, you received a \$12,000 payment from the Maine Community Cultural Alliance.

*Services Provided in 2005-06.* You continued to provide services in the second half of 2005 and through the 2006 legislative session. You stated in your October 3, 2007 response to the Controller's office that on July 6, 2006 you sent an e-mail to David Cheever stating that you expected to discount those services delivered after June 15, 2005

and that you would continue to provide a portion of your services on a *pro bono* basis. On or around September 29, 2006, you sent an invoice for work performed after June 15, 2005 which totaled \$45,647.50 in "Legislative Fees" and \$736.04 in costs, for a total of \$46,383.54.

In your October 3, 2007 response, you explained that "[l]ater in 2006" Verrill & Dana agreed to mark down the remaining amount owed for pre-2007 services to \$15,000. You received no payments during calendar year 2006 for work related to the Maine Community Cultural Alliance.

*Services Provided in 2007.* In late 2006, there appears to have been a decision to charge a flat fee of \$16,500 for services that would be provided in 2007 (rather than a fee based upon an hourly rate). You sent a retention letter dated December 21, 2006 proposing the \$16,500 amount. As far as I know, no one affiliated with the Maine Community Cultural Alliance signed the retention letter.

You were thus owed a combined total of \$31,500 for pre-2007 and 2007 services. You received a \$2,500 payment from the Maine Community Cultural Alliance on or around January 24, 2007. Exhibit A to the audit report suggests that, in addition, you received \$16,500 from the Maine Humanities Council and the Maine Historical Society in 2007. Your September 25 response (page 3) seems to suggest that you received only \$14,000 from those two organizations. You stated that the remaining \$15,000 balance due was "dissolved" (no longer owed) when the Alliance was dissolved by the Secretary of State for failure to file an annual report. The following table summarizes this history:

	2004 - 2005 Services	2006 Services	2007 Services
Value of services (based on hourly rate + costs)	\$69,019.02	\$46,383.54	---
Discount included in initial invoice	- \$17,120.25	\$0	---
Initial amount invoiced	\$51,898.77	\$46,383.54	\$16,500.00 <sup>1</sup>
11/5/05 payment	- \$12,000.00		
Additional late fee charged in May 2006	\$598.48 <sup>2</sup>		
Amount due in 9/29/06 invoice	\$39,898.77	\$46,383.54	
Discount for pre-2007 work	- \$71,282.13 <sup>3</sup>		
Amount owed per late-2006 agreement	\$15,000.00		\$16,500.00
Amount paid in 2007	\$2,500 from MCCA; \$14,000 (or \$16,500) from two nonprofits		

<sup>1</sup> This amount was contained in a 12/21/06 retention letter, but no invoice for this amount was present in the working papers of the audit.

<sup>2</sup> This amount was shown on a 5/17/07 statement of balances due, but not reflected in your 9/29/06 invoice.

<sup>3</sup> There is a slight discrepancy between the \$71,282.13 discount referred to in Mr. Cohen's 9/25/07 response and the amount of 2006 fees and costs shown in the 9/29/06 invoice.

The Controller's audit concluded that your gross billing totaled \$131,902, that your firm forgave \$103,402, and that you received \$28,500. (This presumes you received only \$14,000 from the Maine Historical Society and the Maine Humanities Council in 2007).

### **Evidence Suggesting Lobbying Work**

The staff has not reached a preliminary view regarding whether you were required to register as lobbyists, but a few factors raise that concern and require the Commission to request more detailed information:

- (1) Documents disclosed in the audit suggest that you performed a sizeable volume of work for the Maine Community Cultural Alliance – particularly in 2005. While I fully understand that some portion of the services you provided may not qualify as lobbying, the overall amount of work raises the question of whether your lobbying work alone may have exceeded 8 hours in a calendar month, which would have triggered a requirement to register and file reports.
- (2) According to your invoices and unsigned engagement letter, one major focus of your services was legislation in the 122<sup>nd</sup> and 123<sup>rd</sup> Legislatures. Some of the documents (particularly a July 15, 2005 letter, described below) indicate that you did directly communicate with Legislators, staff, and the Governor for the purpose of influencing legislation.
- (3) You were compensated for your services, even if the bulk of charges were forgiven in July 2005 and late-2006, or were considered dissolved in 2007.

The audit documents suggesting that some lobbying services were provided include:

(1) *July 15, 2005 invoice and letter explaining your services.* Your July 15, 2005 letter describes the services you provided from May 2004 to June 15, 2005. Some of the services described include direct communications with Legislators, staff, or the Governor that fall within the statutory definition of lobbying in 3 M.R.S.A. § 312-A(9) including:

- “conversations with members of the Legislature”
- “Provide on-going support to Legislators and Staff throughout the session”
- “Target and work with key committee members. ... Educate Legislators regarding the New Century Program and Creative Economy.”
- “Develop and implement floor strategy. Lobby individual members, leadership, and coordinate agency lobbying.”
- “outreach to the Governor”
- “Facilitating meetings with Administration officials, including Governor Baldacci”
- “Cultivate support of Governor and members of the Administration”

During the 2005 regular session, the firm provided \$50,532 worth of services. While this reflects services provided by both of you and perhaps others over a 5 ½ month period, it

does require us to ask for information that would verify whether either of you spent more than 8 hours in a month on lobbying during the 2005 session or at other times.

(2) *September 29, 2006 invoice and December 21, 2006 engagement letter.* Your September 29, 2006 invoice seems to suggest direct communications that could qualify as lobbying: “For legislative services rendered from June 16, 2005 to July 1, 2006 regarding bonds and General Fund appropriations for the New Century Community Program and related cultural legislation, including but not limited to attendance at meetings; preparation of documents, telephone conferences, e-mails, memorandums, and correspondence with MCAA members, Legislators and staff, the Governor and staff ...” (Emphasis added.) In addition, your December 21, 2006 proposed engagement letter, anticipates “assisting the Alliance and its partners in arranging and participating in meetings with legislative leadership and the Administration” and “organizing contacts with lawmakers.” While this may have referred to meetings between the agency directors and Legislators, it is possible that you participated in meetings with Legislators in 2007 on behalf of this client as you had previously.

(3) *Verrill & Dana Website.* The profile page for Mr. Cohen on the website of Verrill Dana LLP (not referred to in the audit) lists a number of “Representative Matters,” including “Represented a coalition of Maine libraries and cultural institutions before the Maine Legislature on issues regarding bonds and state funding.”

(4) *Articles of Incorporation of the Maine Community Cultural Alliance.* As noted above, lobbying for increased funding is one of the expected activities stated in the purpose statement in the articles of incorporation for the Maine Community Cultural Alliance: “The primary activities of the corporation shall be to promote in the Maine legislature the importance of cultural resources in Maine, including museums, libraries, historic preservation, and the arts; and to lobby for increased funding for Maine cultural resources.”

(5) *Statements of directors of cultural agencies.* Several statements of the directors of the cultural agencies or affiliated persons describe the purpose of the Maine Community Cultural Alliance as being focused on influencing legislative action.

- The Spring 2005 newsletter from Alden C. Wilson, former Director of the Maine Arts Commission, stated: “The Maine Community Cultural Alliance, active in the 1990s, is in the process of being reformed as a 501(c)(4) nonprofit organization, dedicated to legislative action.”
- Maine Library Association Minutes, September 13, 2006: “David Cheever explained the legislative initiative of the CAC [Cultural Affairs Council] which include funding for New Century Grants and support for the work of the Maine State Cultural Building Task Force. ... The Maine Community Cultural Alliance, a 501 c (6) organization, has been resurrected to provide support for the work of the CAC.”

- Maine Library Association Minutes, March 9, 2007: "The lobbyist will cost \$10,000 - \$11,000. Mike Saxl is the lobbyist working on this legislation [LD 793] and he is also the former Speaker of the House. ..."
- Maine Library Commission Minutes, March 27, 2007: "A number of library groups or associations have contributed \$10,000 for lobbying activities. A second meeting with Mike Saxl and Jim Cohen from Verrill and Dana will be held on March 30 to finalize advocacy plans for LD 793."
- Maine InfoNet Board Meeting Minutes, April 18, 2007: "New Century went from a 25 million request to 5 million .... At the Hearing all of the bonds were folded into one bond and is now a general legislative request. ... It is good to have Mike Saxl with us on this, it was not in the package until Beth Edmonds and Mike Saxl went to see the Governor. ..."

#### **Your Preliminary Explanation regarding Lobbyist Registration**

In your October 3, 2007 response to the Controller's Office, you explained why you were not required to register as lobbyists:

As far as whether lobbyist registration was required for certain activities provided by Verrill Dana to MCCA, the answer is no. Very simply, lobby registration is triggered when an individual engages in direct communications with the Legislature about a pending legislative matter, for compensation, for eight or more hours in a month. At no point did Mike Saxl or I engage in "direct communications" as defined in the law in an amount equal to or above the eight hour monthly threshold, and thus lobby registration was not required for MCCA.

With respect to the particular nature of the services provided by Verrill Dana to MCCA, there was a broad range of services that went well beyond "direct communications." Our services included: (1) attendance by phone or in person at numerous meetings of the Cultural Affairs Council; (2) legislative monitoring activities not defined as lobbying, including the provision of reports regarding the calendar of activities within the Legislature; (3) corporate and legal work to form MCCA; (4) legal advice related to State bonding requirements; (5) public outreach efforts related to the New Century Program; and (6) broad strategic advice related to the expenditure of funds related to arts and culture. ...

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### **Requests for Information**

Request #1. Please affirmatively state – for each month from May 2004 through June 2007 – the number of hours you and others in your firm spent communicating with officials in the legislative branch (including Legislators, staff, and legislative candidates) or the Governor for the purpose of influencing legislative action on behalf of the Maine Community Cultural Alliance (or any of the public or private cultural agencies named above). Provide a separate monthly total for Michael Saxl, for James Cohen, and for any other employee of the firm who lobbied for the client. Include in the total for each month time spent preparing proposals, testimony, and analyses that were submitted to covered officials. Please include all time spent on these communications and preparations, even if your view is that this work ultimately was uncompensated because it was later discounted.

Request #2. Please affirmatively state – for each month from May 2004 through June 2007 – the number of hours you and others in your firm spent on services other than lobbying (as defined in 3 M.R.S.A. § 312-A(9)) for the Maine Community Cultural Alliance (or any of the public or private cultural agencies named above). Provide a total for Michael Saxl, a total for James Cohen, and a combined total for all other employees of the firm who provided non-lobbying services for the client.

Request #3. Please describe your firm's internal record-keeping system which you use to track time spent lobbying or providing other services for your legislative clients, and what procedures are in place to ensure that attorneys register with the Commission when they have lobbied for more than eight hours in a calendar month. Do you make any notation in the system for time spent lobbying? Does the system notify you when you have lobbied for more than 8 hours in a calendar month, or is it the lobbyist's responsibility to monitor when he or she has exceeded the threshold?

Request #4. Please provide the time records (including descriptions of work) from your record-keeping system that support your responses to #1 and #2. The Commission staff would use these records to verify the accuracy of your responses to #1 and #2 and does not anticipate including your time records in the regular packet of materials distributed to Commission members.

Request #5. Please verify whether the statements in the section above entitled "Discounted and Paid Services" are accurate, and please correct any misstatements or misunderstandings in that discussion.

Request #6. In your October 3, 2007 response (quoted above), you state that you were not required to register as a lobbyist because you did not perform more than 8 hours of lobbying in a calendar month. Does this response rely on a presumption that all compensation you received was entirely for non-lobbying services? In other words, in your view if you had been fully compensated by the Maine Community Cultural Alliance

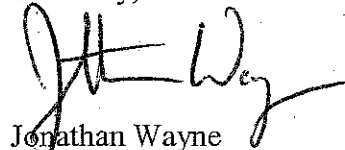
(or any of the public or private cultural agencies named above) for 100% of the services you provided, would you have been required to register as a lobbyist?

Request #7. The audit records include a March 27, 2007 retention letter to Jamie Ritter of the Joint Library Legislation Committee proposing a flat fee of \$10,000 to provide legislative assistance and strategic advice on a single bill, L.D. 793. Mr. Ritter is a member of Maine Library Commission. Was the \$10,000 you received compensation solely for your work on L.D. 793 or also compensation for work you performed in 2007 or earlier for the Maine Community Cultural Alliance? Lobbying on the New Century Community Program would seem to benefit the member-organizations of the Maine Library Association, and the April 18, 2007 minutes of the Maine InfoNet Board express approval for your efforts on the New Century program and discuss L.D. 793. Your July 15, 2005 letter also suggests a connection between work done for the Alliance and 2004 work performed for the Maine Library Association.

In addition, please provide any other information which you believe would be relevant for the Commission members to consider in reaching a decision whether any further investigation is necessary.

Please e-mail me at Jonathan.Wayne@maine.gov or telephone me at 287-4179 if you have any questions about this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Wayne", written over a horizontal line.

Jonathan Wayne  
Executive Director

cc: Phyllis Gardiner, Commission Counsel  
Gene R. Libby, Esq.



# Verrill Dana<sup>LLP</sup>

Attorneys at Law

JAMES I. COHEN  
PARTNER  
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www.verrilldana.com

January 7, 2008

Jonathan Wayne  
Executive Director  
Maine Commission on Governmental Ethics  
and Election Practices  
135 State House Station  
Augusta, ME 04333-0135

Dear Mr. Wayne:

Thank you for your letter to Valerie Wright dated December 7, 2007 regarding the Maine Community Cultural Alliance. In that letter, you asked that we provide answers to two additional questions, which are provided below:

1. **Does the time summarized in Exhibit 6 cover all work performed by Verrill Dana during the time period for the Maine Community Cultural Alliance, and all individuals, governmental agencies, and nonprofit organizations associated with the Maine Cultural Affairs Council?**

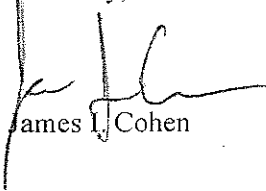
Answer: Please note that there were a handful of clerical errors in Exhibit 6 as previously submitted. We have corrected these typos, and a revised version is attached. With respect to the revised Exhibit 6, the answer to the question noted above is "yes."

2. **Since James I. Cohen did not sign your November 30 response, we ask that he provide written confirmation that to the best of his knowledge Exhibit 6 is an accurate summary of the services he provided.**

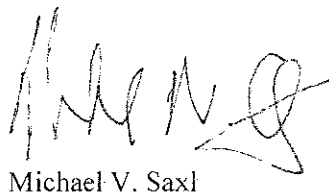
Answer: Mr. Saxl signed the November 30 letter on Mr. Cohen's behalf with his approval as confirmed by his signature below. To the best of his knowledge, Exhibit 6 is an accurate summary of the services he provided.

We hope the foregoing adequately answers the questions posed, and we look forward to meeting with you next week.

Sincerely,



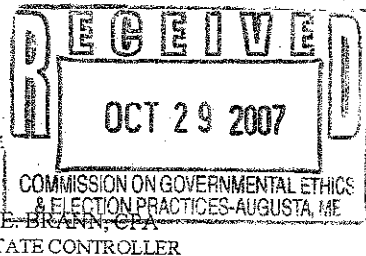
James I. Cohen



Michael V. Saxl

JIC/mhw  
cc: Valerie A. Wright

STATE OF MAINE  
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES  
**OFFICE OF THE STATE CONTROLLER**  
14 STATE HOUSE STATION AUGUSTA, ME 04333-0014



EDWARD A. KARASS  
STATE CONTROLLER



TERRY E. BRAUN, CPA  
DEPUTY STATE CONTROLLER

October 26, 2007

Rebecca M. Wyke, Commissioner of Administrative & Financial Services  
3<sup>rd</sup> Floor Cross Office Building  
Station #78  
Augusta, Maine 04333-0078

Commissioner Wyke:

We have completed our audit of the relationship amongst several Cultural Agencies of State Government, the Maine Cultural Affairs Council, the Maine Community Cultural Alliance, a private non-profit corporation, and Verrill Dana, LLC. While the money involved to date is less than \$5,000 of State and Federal money, we find this relationship to be odd in its nature. There is no clear separation between the State, its employees, and the MCCA. Also, we find there to be too many vagaries surrounding the activity that has been engaged in by all involved including the role of the MCCA's contract with its vendor.

We have provided you with a narrative of the events and description of the relationship as we understand it. The participation by representatives of the State has been acknowledged through our interviews with the principals and also confirmed by our audit evidence.

We have provided the Directors of the four primary Cultural Agencies with our conclusion, findings, and recommendations regarding this complicated relationship. We have taken their comments into consideration in the final version of the report. It is fair to say that there is substantial disagreement between the Office of the State Controller and the Directors of the Library, Museum, Arts Commission, and Historic Preservation Commission regarding the findings and recommendations we put forth for their consideration and action.

I would be happy to discuss the result of this phase of a multi - phase internal control audit of the Cultural Agencies with you at your earliest convenience.

Sincerely,

  
Edward A. Karass, CGFM  
State Controller

STATE OF MAINE  
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES  
**OFFICE OF THE STATE CONTROLLER**  
14 STATE HOUSE STATION AUGUSTA, ME 04333-0014

EDWARD A. KARASS  
STATE CONTROLLER



TERRY E. BRANN, CPA  
DEPUTY STATE CONTROLLER

October 26, 2007

Alden Wilson, Director  
Gary Nichols, Director  
Earle Shettleworth, Director  
J.R. Phillips, Director  
Donna McNeil, Deputy Director

Thank you for your thoughtful comments regarding the draft of the Audit Report. I met with my senior staff to review your comments with the goal of incorporating as many of your suggested changes as possible and to clarify those areas that you believed required clarification. Your suggestions have helped to make this a better product for all of us.

From here, the report is transmitted to Commissioner Wyke for her review as well as discussion with all concerned. I would encourage you to make an appointment with her to discuss any concerns that you may have regarding the audit.

I have read through your comments regarding the audit process. Unfortunately, an audit of this type and scope is outside the normal audit procedure and protocol. It is somewhat adversarial in nature with communication typically going in one direction. I have reviewed your comments regarding the meeting of September 12, 2007 with my staff. We have a different recollection of the events on this date.

I am also assuring you that the auditor did not have any finding and conclusions developed before the initial meeting with you. Sometimes, when information is not immediately volunteered, investigatory methods must be employed.

Once again, thank you for your thoughtful comments. They are a help to understand the dynamics as we continue with the Internal Control Audit of your agencies.

Sincerely,

Edward A. Karass, CGFM  
State Controller

## **Internal Audit Review of the State of Maine's Relationship to the Maine Community Cultural Alliance and Verrill Dana, LLC**

### **Background and Scope**

In late June, 2007, several individuals came forward with allegations of possible wrongdoing and unethical behavior on the part of the state cultural agencies. We met with these individuals several times to make sure we had a clear understanding of the issues being presented. We then began examining objective evidence to determine if these allegations had any merit. Our initial work supported the basic facts of the allegations and also brought to light additional issues which require further inquiry. Therefore, we broadened the scope of our review to include a general internal control review of the cultural agencies. This report summarizes the findings related only to the allegations concerning the financial operations and financial relationships between the Cultural Agencies, the Maine Community Cultural Alliance, and Verrill Dana, LLC.

### **Maine Cultural Affairs Council**

The Maine Cultural Affairs Council (CAC) consists of a chair of the Cultural Affairs Council (appointed by the Governor), the chairs and vice-chairs of the Maine Arts Commission, Maine Historical Preservation Commission, Maine Library Commission, Maine State Museum Commission, Maine State Archives Advisory Board, Maine Humanities Council, and Maine Historical Society. Non-voting members consist of the directors of the seven cultural agencies and the governor's liaison.

### **The Maine Community Cultural Alliance**

The allegation concerned the implementation of a process to circumvent the prohibition of using state or federal funds to pay for lobbying activities by creating a corporation through which to process these payments. While the Articles of Incorporation filed with the Secretary of State on December 14, 2004 for the Maine Community Cultural Alliance (MCCA) and the terms of an unsigned engagement letter with Verrill Dana, LLC seem to indicate lobbying/advocacy activities were contracted for, the Office of the State Controller does not draw any conclusions regarding this issue. To have a fair perspective on the financial activities involved requires reviewing the full context of related activities over more than two year's time.

### **History and Context**

The Maine Community Cultural Alliance was an active organization in the 1990's whose primary purpose was to promote the activities of the various cultural organizations that were represented on the board. With the enactment of the New Century Communities Program in 1999 (PL 1999, C. 401, PL2001, C401), the organization became dormant because this new program was really the result and culmination of the group's work.

During 2004, members of the Cultural Affairs Council began discussions with Verrill Dana, LLC. According to the terms of an unsigned engagement letter provided by Verrill Dana, LLC to the MCCA and members of the Cultural Affairs Council, Verrill Dana was to provide advice on legislative matters and strategy initiatives to promote the Cultural Agencies' agenda before the Governor and Legislature. The specific participants from the Cultural Affairs Council who were directly involved in this venture are vague regarding specific meeting dates and topics of discussion. We have been unable to locate any meeting minutes of the Cultural Affairs Council from this time period.

As a result of meetings amongst Verrill Dana, LLC, the Directors of the Cultural Agencies, other members of the CAC, and others representing community based cultural agencies, on December 14, 2004, Articles of Incorporation for the Maine Community Cultural Alliance as a 501(c)(4) organization were filed with the Maine Secretary of State to revive the MCCA. The audit evidence suggests that the decision to revive the MCCA was made with the full knowledge and participation of the directors of the several cultural agencies who were in place at this time.

Control of the organization's finances was vested in the treasurer of the MCCA. As we conducted our field work, we could not locate any documents related to an initial funding plan or budget for the organization. We have been unable to locate any official roster of board members or any meeting minutes for the Maine Community Cultural Alliance. However, Verrill Dana, LLC was working on behalf of the Alliance during the second half of 2004 and the first half of 2005 according to the engagement letter.

As late as March 2006, Verrill Dana, LLC and employees of the State of Maine (Cultural Agencies) were continuing to refine the mission of the MCCA and the relationships between Verrill Dana, LLC and the Cultural Agencies. As noted in a series of emails on March 24, 2006 that were passed amongst Verrill Dana, LLC, Treasurer of MCCA, and the Director of the Arts Commission:

1. Agency directors and Verrill and Dana representatives will continue to review legislation for advocacy purposes.
2. We agree that the Cultural Affairs Council office will serve as a central resource for monitoring and communications regarding legislative initiatives.
2. We agree that the Cultural Affairs Council office should serve as a collection site for and substantial generator of correspondence, legislative testimony, op ed drafts, and other written materials as .
3. We agree that Verrill and Dana will continue as consultants to the Community Cultural Alliance on matters of tactics and strategies relating to pending and proposed legislation and major fundraising initiatives.
4. We agree that the Cultural Affairs Council and its designees should remain active with the Executive Department's Creative Economy Initiative, including engaging with the redevelopment efforts relating to the Brunswick Naval Air Station.
5. We agree that the Cultural Affairs Council should encourage and advise the Community Cultural Alliance to seek grant support from national foundations that are interested in innovative methods to preserve and promote culture.

We note at this point in our narrative and understanding of the events surrounding the MCCA, the Cultural Agencies, and Verrill Dana, LLC, that prior to February 27, 2006, the Treasurer of MCCA was a private citizen; however, on February 27, 2006, the Treasurer of MCCA was hired by the Maine State Library (MSL), a state agency, as a Planning and Research Associate II while continuing his duties as treasurer and registered agent for the MCCA. The exchange of the aforementioned emails took place nearly one full month after this person accepted state employment.

The initial funding of the MCCA resulted in the Maine Arts Commission contributing \$3,000 (Federal Funds), the Maine State Museum contributing \$1,000 (General Fund) and other non-state organizations contributing a net total of \$14,944. Of the total funds available of \$18,944, \$14,500 was paid to Verrill Dana, LLC, and \$2,221.57 was used for a survey and other corporate expenses. On April 5, 2007, \$2,222.43 was returned the State of Maine and deposited to the Cultural Affairs Council's Other Special Revenue Account – New Century Program/Library instead of the accounts of origination. In light of the subsequent disbursements to Verrill Dana, LLC, we argue that the Arts Commission and the Maine State Museum contributed state funds to the MCCA with the knowledge that these funds would be directly used to pay for costs incurred by MCCA for Verrill Dana's services. The Arts Commission used federal funds for its contribution and the Maine State Museum used general fund money. According to Federal guidance in OMB A-87 (cost principles for State, Local, and Indian

Tribal Governments), the costs of membership in an organization substantially engaged in promotional activities are unallowable and the \$3,000 in federal funds used to pay dues to MCCA should be returned to the federal government. We question the disposition of the funds that were returned to the State of Maine and deposited to the New Century Program/Cultural Affairs Council's account. Please refer to Exhibits A & B for the flow of monies to the MCCA and its financial transactions.

Verrill Dana, LLC submitted its first invoice to the Maine Community Cultural Alliance for \$51,898.77 in July of 2005. The Maine Community Cultural Alliance and Cultural Affairs Council were unprepared for this significant invoice because of poor control, little monitoring of Verrill Dana, LLC's efforts, and lack of a signed engagement letter to limit the scope of their work. During the course of our audit, we could not locate any specific tangible work product, such as a report or written strategy plan, created by Verrill Dana, LLC as a result of this engagement except for the Articles of Incorporation and the by-laws for the MCCA.

From the initial round of funding for the Maine Community Cultural Alliance, the council was able to pay Verrill Dana, LLC \$12,000 at the end of 2005. In November, 2006, the Maine Humanities Council and Maine Historical Society paid an additional \$3,000 each to the MCCA, but this money was returned three months later. The Maine Humanities Council subsequently sent the \$3,000 directly to Verrill Dana, LLC, along with an additional \$5,000 in March, 2007.

There was no further activity conducted by the Maine Community Cultural Alliance other than a final payment of \$2,500 to Verrill Dana, LLC in January, 2007. Of the almost \$132,000 in gross billing for this engagement, Verrill Dana, LLC discounted, wrote off or classified as pro bono a total of \$103,000 at the conclusion of the engagement.

We assert that it is likely there was a general acknowledgement and understanding that state agencies are not allowed to fund and participate in private non profit corporations to act on their behalf in the manner described here in. Nevertheless, the council decided that the best way to achieve their goals was through this independent non-profit corporation. Reference to the MCCA and efforts to revive it are clearly stated in the minutes of the Maine Library Commission in July, 2006. Additionally, in the February 8, 2007, minutes of the Arts Commission, Rebecca Conrad, Deputy Chair, "reported the Maine Community Cultural Alliance (MCCA) is a private organization that... had been working on obtaining a 501 (C) 3 status. The mission of the organization would be to provide advocacy for the cultural agencies. The Cultural Affairs Council has put this idea on hold for the time being."

In the minutes of the March 9, 2007, Arts Commission meeting, the Vice Chair reported that, "Creative Maine the former Maine Community Cultural Alliance is a working group that was developed to advocate for the cultural agencies. On March 26, the Cultural Affairs Council will discuss the status of the Creative Maine."

## **Findings**

### **▪ Internal Control over Financial Administration**

Our review of the events and circumstances surrounding the intricate relationship amongst all of the parties involved in this series of events has revealed material weaknesses in the internal control structure of the administration of the Cultural Agencies' finances.

We believe that the Agencies do not have a financial administrative structure of sufficient sophistication and independence to adequately advise or challenge as the case may be, the financial decisions that are made on a daily basis to ensure compliance with state and federal fiscal policies, procedures, and law.

## ▪ Misuse of State Funds

While in this series of events only a few thousand dollars of state money is directly connected to the funding of the activities of the MCCA, we believe the funds have been used in an inappropriate manner. Our review of the budgets enacted by the Legislature for these agencies did not reveal an identifiable request for an appropriation or allocation of funds to be used for funding of a private non profit corporation to be set up to pay the costs of the retention of advocacy or other strategic services on behalf of the Cultural Agencies. We do note that the payment of the state and federal funds to the MCCA was recorded in the State's official accounting records as dues paid to the MCCA. We could not find an adopted schedule for dues assessment by the Board of the MCCA as there was no Board in place.

A review of Maine Law reveals that the Legislature did anticipate that agencies would, in fact, engage in advocacy to promote their programs, agendas, and budget requests in various settings in the legislative arena. PL 1993, c. 691 clearly stated the requirements for state employees:

**Within 5 days of the convening of a regular legislative session, a state employee or an independent agency employee must register at the office of the commission as described in section 316-A if:**

- 1. Legislative designee. The employee is designated by the head of a department or agency to serve as the primary legislative designee for that department or agency; and**
- 2. Lobbying requirements. The job description of the employee contains lobbying requirements.**

**An employee registering under this section is exempt from all other requirements under the law regarding lobbyists.**

## ▪ Non Compliance with Title 27, §557

With direct respect to those agencies comprising those known as the cultural agencies and the programs of these organizations, the Legislature enacted PL 1989, c. 700, Part B, § 42 creating the Cultural Affairs Council which would act as a coordinator for several cultural agencies to, among its duties, report to the Governor and legislature on an annual basis as required by Title 27, § 557 which states:

### **§557. Annual report**

**The Maine State Cultural Affairs Council shall annually report to the Governor and the Legislature. The directors shall provide the necessary information and assist the council in the preparation of this report. This report shall include the following:**

- 1. Receipts and expenditures. The receipts and expenditures on the accounts of the cultural agencies;**
- 2. Acquisitions. The number of acquisitions by the cultural agencies, specifying those obtained by purchase, donation or exchange;**
- 3. Program accomplishments. The accomplishments of the programs within the cultural agencies;**
- 4. Program needs. The program needs of the cultural agencies; and**
- 5. Improvements. Suggestions for improvement of the individual programs within the cultural agencies and for the improvement of delivery of cultural services in the State.**

We could not locate any reports by the Council that would satisfy the requirement of the law.

▪ **Inadequate Control over Compliance**

- The Directors on behalf of the Cultural Affairs Council should have consulted with the office of the Attorney General to determine the appropriateness of participating in the establishment and funding of an outside corporation that would receive and expend money for legislative advocacy as described in its charter.
- The Directors should have sought a budgetary request from the Legislature with the assistance from the Commissioner of Administrative and Financial Services to address their financial obligation to MCCA and to Verrill Dana, LLC as the final recipient of the flow through of money from the MCCA and the State.
- The Cultural Affairs Council and the agencies represented by the Council should refrain from any similar relationships in the future where there is no clear separation between the State of Maine, its employees or agents, and the external body. The scope and authority of the council to enter into any binding agreements on behalf of the State should comply with Maine Law and procurement regulations to ensure that all agreements and the manner in which they are executed meet standards as set forth in Financial Order 10, FY88/89 dated April 1, 1989, and all legal requirements.

**Conclusion**

There should be no doubt, in our opinion, that the effort to revive the Maine Community Cultural Alliance was poorly thought out and managed in almost every aspect.

**Recommendations**

- Whenever a state official or legislatively authorized body commits or expends funds for any purpose, an agreed upon service or product is identified and received consistent with current state purchasing requirements.
- The funds deposited to the New Century Library Program from the refund of "dues" from the MCCA be returned to the accounts of origination and that a legislative appropriation be sought to restore the federal funds used for the purposes of funding MCCA activities in violation of Federal Circular OMB A - 87.
- The financial administration of the Cultural Agencies with the exception of the Archives be transferred to an established service center under supervision of the Commissioner of Administrative and Financial Services to ensure adequate financial controls are put into place and complied with by the Cultural Agencies as well as the financial stewards of the service center.
- The Directors of the Cultural Agencies review Executive Order #10 FY88/89 dated April 1, 1989. The Directors will review the Executive Order with the employees of their respective agencies, commission members, and the Cultural Affairs Commission members to ensure that there is an understanding and appreciation of the standards that all employees and representatives of Maine State Government must adhere to in the conduct of their business.
- The Directors of the Cultural Agencies consult with their assigned attorney in the Office of the Attorney General and with their liaison in Office of the State Controller whenever they are unsure of the legality or the appropriateness of any planned expenditure in advance to ensure that the rules, regulations, and laws are not violated.



# Exhibit A

## Maine Community Cultural Alliance Financial Transactions

